

**Sisk, Richard**

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**From:** Schmittziel, Paula  
**Sent:** Wednesday, September 10, 2014 1:44 PM  
**To:** Schmittziel, Paula  
**Subject:** Fw: VB/I-70 - OU-01  
**Attachments:** OU1 Strategy 26MAR12 drft final.docx

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----- Forwarded by Paula Schmittziel/R8/USEPA/US on 09/10/2014 01:43 PM -----

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Date: 03/27/2012 11:54 AM  
Subject: VB/I-70 - OU-01

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Fonda - Here is the outline of the strategy that I mentioned to you when we spoke this AM. As I said, I think Steve is going to e:mail Doug J. about setting up a meeting between EPA & CDPHE for Tuesday afternoon, April 10th - after the training in the AM to discuss the issue of changing the remedy to include additional ICs for those properties where EPA did not obtain access. Hopefully, the attorneys can attend also since the changes involve several legal issues.

Let me know if you have any Qs or concerns on the strategy. Thanks.

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*(See attached file: OU1 Strategy 26MAR12 drft final.docx)*

## OUTLINE of STRATEGY for OU-01 - VB/I-70

### BACKGROUND:

- OU-01 at VB/I-70 is a residential area that was listed on the NPL due to lead and arsenic contamination. Two removal actions took place prior to the ROD being signed in September, 2003. The remedial action was initiated in 2004 and an RA report was completed in 2008.
- In 2009, the 5 Yr. Review (5YR) report identified 33 properties that had been sampled but had not been cleaned up due to lack of access. In addition, 155 properties had never been sampled due to lack of access. Over 4000 residential properties in OU-01 were evaluated and if necessary remediated between 2003 & 2006. The 5YR identified the issue that the remedy was not fully protective due to the lack of ICs in place to address these properties.
- The 5YR recommended a change to the ROD to incorporate ICs as a component of the remedy and implementation of ICs for properties where the remedial action is not complete. Recommendation for ICs is required to ensure protectiveness of the remedy for future property owners.
- Past discussions with the State, the City of Denver and community leader indicated that they all wanted EPA to cleanup all properties and that they did not like EPA not cleaning up some properties. There was discussion about having the City adopt and implement ICs and the City was against it due to the lack of resources.
- EPA CIC is aware of a number of properties in the Site that have changed ownership since the previous cleanup activities.
- It has been ~6 years since EPA completed soil cleanups. The remaining property owners can be grouped into one of several categories:
  - \* New property owners - those who have purchased a property since EPA's last cleanup activity.
  - \* Landlords - (old/existing or new investment property owners) including those who received rental payment from the government (Section 8 housing)
  - \* HUD, Banks, etc. - entities who have acquired the property thru foreclosure
  - \* Existing property owners - those who have owned the property for more than 6 years and denied access in the past or whom the Agency was not able to contact
  - \* Property owners whose property was sampled and the results indicated levels of arsenic or lead or both were above the action levels selected in the ROD.Some property owners may actually fit into more than 1 category.

### GOALS/OBJECTIVES:

EPA would like to implement the recommendation in the last 5YR to establish ICs for the properties not addressed in the original cleanup. However, since none of these property owners were informed by the original ROD or during the cleanup that there was a consequence for not allowing EPA full access, the team thinks that implementing ICs without giving property owners one last chance to allow access would not be well received in the community. Thus, our objectives are as follows:

1. To gain access to the remaining properties to conduct soil sampling and if necessary clean up contaminated soils.
2. Change the remedy to include some form of ICs to at a minimum notify future property owners of the known condition of the property, and more robust ICs will be implemented if possible.

## PROPOSED STRATEGY for ACCESS:

1. EPA will make 1 last attempt to gain access to the remaining property owners for the purpose of sampling the property. EPA will begin with sending a letter to the property owner of record (City of Denver) in both English and Spanish. This will be followed up by a phone call and if necessary, contacting the property owner in person.

In the past, the property owners were not told that there may be consequences if they don't provide access to EPA to sample and/or cleanup their property. With this effort, property owners would be told that EPA may put a notice in the property records or other action to inform future property owners of the condition of the property if they don't provide access to sample and/or cleanup.

If a property owner denies EPA access this time, we would propose the following course of action.

- > For landlords or banks - issue a UAO for access.
- > For HUD - Contact a HUD POC for the properties where access is needed.
- > For property owners whose residential property we have sampled but have denied access for cleanup, a notice would be placed on the title of the property in the county records.
- > For other property owners whose property has not been sampled - a deed notice would be filed on the property.

2. Any of these proposed courses of action for denial of access would be taken only after at least 1 additional attempt was made to gain access and more likely through several avenues – i.e., mail, phone and site visit. The filing of a deed notice on any property would not take place until EPA was de-mobilizing from the Site in 2013 after cleaning up the properties that required cleanup. The reason for waiting until after EPA had completed the cleanup is that some property owners may change their mind when EPA is actually performing a cleanup at a near-by property.

### 3. SCHEDULE (tentative):

- Identifying current ownership and developing a communication strategy - March 20th
- Talk to Lausch and Hopkins @ HQ on ROD - 5YR Qs - Wk of 3/12
- Briefing EPA management (both Enforcement & Program up to ARA) on proposed strategy - by March 27
- Engage the State in proposed strategy -by April 5th
- Meet with City on strategy - April 12 or 16th
- Schedule meetings with community leaders on proposed strategy of sampling and cleanup if necessary - April 23 - May 3.
- Proceed with acquiring access

It would be optimal to have access in place for soil sampling by middle to end of June so that sampling could be completed by end of August.

## PROPOSED REMEDY CHANGE:

- Team is exploring IC options but in the past both the City and the State have not offered any help with implementing ICs. Also, based on the agreement between EPA and the State for NPL Sites, if it is determined that the remedy change here triggers a new look at ARARs and the State IC law is determined to be an ARAR, we are not sure how the ICs to comply with the State law will be implemented..

- We had a discussion as to whether or not we could change the remedy through an ESD (Explanation of Significant Differences) or if it would require a ROD amendment. The Region (Program and Enforcement) will speak with HQ on how the Remedy should be changed.
  - The NCP and Agency guidance on Post-ROD changes requires consideration of the following:
    - **Scope of Change** - Does the change to the ROD alter the scope of the remedy, (i.e., type of treatment or containment, physical area of the RA, remediation goals to be achieved, type and volume of waste, to be addressed).
    - **Performance** - Would the change/alter the performance - i.e., treatment levels to be attained?
    - **Cost** - Are there significant changes in costs from the estimates in the ROD?
  - The proposed change to the ROD would not alter the Scope of the remedy - soil removal based on same action levels would still be performed thru summer of 2013. Nor would the proposed change to the ROD change the Performance (action levels) selected for arsenic or lead that would require soil removal. Finally, the additional Cost for adding additional ICs to the remedy would not significantly increase the overall cost of the remedy.
  - **The proposed post-ROD change to the remedy would be considered Significant because it involves a change to a component of the remedy but it does not fundamentally alter the overall cleanup approach.**
  - Advantages to changing the remedy through the issuance of an ESD include:
    - The remedy does have ICs already in the form of a Community Health Program (CHP) which was to be implemented on an ongoing basis until the residential soil removal portion of the remedial action was completed. The CHP has not been operating since at least 2008 when EPA last remediated properties.
    - The remedy could be changed thru an ESD to expand ICs to include some form of deed restrictions/notice on the property.
    - Additional ICs are only needed to the few properties that refuse to provide access either for sampling and/or for cleanup so it can be argued that an ESD with its "lower profile" of community involvement is the appropriate mechanism for changing the remedy.
    - An ESD does not require the Agency to hold a public comment period or a public meeting.
- Since the change to the remedy to include other ICs would affect only small portion of residential property owners who have not provided EPA access for sampling or cleanup, holding public meeting could raise a lot of unnecessary focus in the community.
- EPA will be publishing the ESD in the form of a fact sheet and could accept written comments.

#### QUESTIONS:

1. If EPA changes the remedy, it will potentially trigger the applicability of the Colorado IC law. It may not be possible to implement the ICs required under the Colorado law?
2. Will the community leaders agree with EPA's action to file an EC on a property that we have been denied access or are they only interested in EPA sampling and/or cleaning up all properties?
3. Will HQ require 100% compliance with remedy - i.e., either sampled/cleaned up or an IC must be established.? Discussions with HQ seem to indicate that either an IC or sampling/cleanup is necessary.
4. Does HQ agree with the Region's assessment that a post-ROD change to the remedy (i.e., a new IC) as envisioned only requires an ESD or will they require the Region to do a ROD amendment?

**RECOMMENDATION:**

1. The Team recommends scheduling a meeting with the State including their management and legal counsel to discuss the IC options including the State's Environmental Covenant law that could be implemented.
2. EPA enforcement attorney is preparing a summary of the IC options with pros and cons and how the ICs could be implemented for this meeting.

DRAFT